Canada Industrial Relations Board

Conseil canadien des relations industrielles

Annual Report

2014–15

Supporting Fair and Productive Workplaces

Canada

© Her Majesty the Queen in Right of Canada, as represented by the Minister of the Canada Industrial Relations Board, 2016

Cat. No. LR1E-PDF
ISSN 2369-923X

This document is available on the Canada Industrial Relations Board website at http://www.cirb-ccri.gc.ca

This document is available in alternative format upon request.

Table of Contents

Message from the Chairperson 1

I. Overview and Mandate 3

A. What is the CIRB? 3

B. What does the CIRB do? 3

C. Who are the decision-makers at the CIRB? 4

D. How does the CIRB carry out its operational role? 11

II. 2014–15 in Review 13

A. Caseload and Activities 13

B. Effectiveness 16

C. Certification and Revocation Applications–Changes in Processing 18

D. Innovative Approaches 26

E. Client Community Outreach 26

III. Key Decisions 29

Message from the Chairperson

It is my pleasure to present the activities undertaken by the Canada Industrial Relations Board (the Board) over the last fiscal year and to highlight the Board's results and performance. It is my first report as Chairperson of the Board, and I am pleased to communicate these results to the labour relations community and to Canadians.

As I began my mandate on December 28, 2014, I established four priorities for the Board. First, we needed to focus on the implementation of the *Employees' Voting Rights Act* which was adopted by Parliament in December 2014 and undertake the necessary process reviews to achieve the timely processing of applications for certification and revocation under the new legislative provisions.

Second, the Board is transitioning to a new service delivery model with the implementation of the Administrative Tribunals Support Service of Canada (ATSSC). Since November 1, 2014, the Board has no resources or employees of its own and must obtain all its support from the ATSSC along with 10 other administrative tribunals. This represents a significant shift in priority planning and resource management for the Board and will necessitate dedicated attention to ensure the needs of the Board are met.

Third, I made it a priority to continue with my predecessors' determination to keep the labour relations community and the practitioners engaged in process reviews and initiatives to ensure the Board remains relevant and effective in its approaches and its services to the community. The Client Consultation Committee was reinvigorated with the arrival of new representatives and a new chair of the committee was selected to coordinate the work of the committee.

Fourth, I felt it was important given the new administrative structure that we deploy sustained efforts to preserve or enhance the visibility of the Board and its role as an institution that effectively supports the collective bargaining framework. Despite the changes and the challenges that the Board faces as an organization, the effective delivery of its statutory mandate has to remain the focus and the priority of the Board and its partners.

One of the ways of achieving these objectives was to re-establish the Board's annual report that is provided for in section 121 of the *Canada Labour Code*. The Board had obtained dispensation from producing this report in 2003 as it was also obligated to produce a Report on Plans and Priorities and a Departmental Performance Report that are produced and tabled in Parliament annually as part of the budget process. As the Board no longer has departmental status under the *Financial Administration Act*, it will no longer have the opportunity to communicate and report on its activities and performance to the public through the budget documents. Accordingly, I felt

it was important to revive the Board's own annual report and to publish it as broadly as possible. It is my hope that you will find the report helpful and informative.

The Board works extremely hard to address the needs of the labour relations community and I commend the Vice-Chairpersons and Members of the Board as well as the dedicated employees who continuously strive to find the best solutions that ultimately will result in fair and productive workplaces.

Ginette Brazeau
Chairperson
February 2016

I. Overview and Mandate

A. What is the CIRB?

The Canada Industrial Relations Board (the CIRB or the Board) is an independent, representational, quasi-judicial tribunal empowered to resolve labour relations issues arising in the federally regulated sector.

The Board's mandate is to contribute to and promote a harmonious industrial relations climate in the federally regulated private sector through the impartial, effective and appropriate administration of Part I (Industrial Relations) and certain provisions of Part II (Occupational Health and Safety) of the *Canada Labour Code* (the *Code*).

The Board also contributes to Canada's cultural community by promoting constructive professional relations between artists and producers in the federal jurisdiction, having been tasked with administering and applying Part II (Professional Relations) of the *Status of the Artist Act* as of April 1, 2013.

The CIRB's jurisdiction extends to federal works, undertakings and businesses and covers some 800,000 employees and approximately 12,000 employers working in enterprises that have significant economic, social and cultural impacts on Canadians from coast to coast. The variety of enterprises in the federally regulated sector, as well as their geographic spread and national significance, contribute to the uniqueness of the federal jurisdiction and the role of the CIRB. Sectors include:

- Broadcasting
- Chartered banks
- Airports and air transportation
- Shipping and navigation
- Interprovincial or international transportation by road, railway, ferry or pipeline
- Telecommunications
- Grain handling
- Uranium mining and processing
- Most public and private sector activities in the Yukon, Nunavut and the Northwest Territories
- Some First Nations undertakings
- Federal Crown corporations (including, among others, Canada Post Corporation, Atomic Energy of Canada Limited and the national museums)

B. What does the CIRB do?

The CIRB undertakes a wide range of industrial relations activities in matters related to the federal jurisdiction sectors mentioned above. These activities include:

- Granting, modifying or terminating collective bargaining rights
- Investigating, mediating and adjudicating complaints of unfair labour practice

- Issuing cease and desist orders in cases of unlawful strikes and lockouts
- Rendering decisions on jurisdictional issues
- Dealing with the complex labour relations implications of corporate mergers or acquisitions
- Determining the level of services that must be maintained during a legal workstoppage

The Board fulfills a vital function in recognizing and protecting the rights of employees and employers, and in constructively resolving conflicts. It does so with a commitment to process, hear and determine applications and complaints fairly, expeditiously, and economically.

Before adjudication, the CIRB plays an active role in helping parties to resolve their disputes through mediation and alternative dispute resolution approaches.

The Board also engages in consultation with its clients and ensures open lines of communication with the industrial relations community.

C. Who are the decision-makers at the CIRB?

The *Code* establishes that the Board will be composed of the following decision-makers, to be appointed by the Governor in Council:

- A Chairperson, for a term not exceeding five years
- At least two full-time Vice-Chairpersons, for a term not exceeding five years
- Any other part-time Vice-Chairpersons, for a term not exceeding five years
- At most six full-time Members, equally representing employers and employees, for a term not exceeding three years
- Any other part-time Members, equally representing employers and employees, for a term not exceeding three years
- Any other part-time Members needed to carry out the Board's functions under Part II

The Board currently consists of the Chairperson, six full-time Vice-Chairpersons, and five full-time and two part-time Members.

Full-time Members

Ginette Brazeau, Chairperson

Ms. Ginette Brazeau was appointed as Chairperson of the CIRB on December 28, 2014.

Prior to her appointment as Chairperson of the CIRB, Ms. Brazeau held the position of Executive Director and General Counsel of the CIRB since September 2012 and was first appointed as Executive Director and Senior Registrar of the CIRB in April 2008. In these capacities, Ms. Brazeau assisted the Chairperson of the Board in the exercise of her overall responsibilities for the administration of the Board and was responsible for case management, legal services and the regional operations of the Board.

Prior to joining the Board, Ms. Brazeau was the Senior Director of Strategic Policy and Legislative Reform with the federal Labour Department and also worked at the Federal Mediation and Conciliation Service as Director of Legislation, Research and Policy. In these capacities, she was responsible for advising senior management and the Minister of Labour on labour and employment program or legislative initiatives and on the administration of the *Canada Labour Code*.

Ms. Brazeau holds a Bachelor of Laws and a Bachelor of Social Sciences from the University of Ottawa and was called to the Bar of Ontario in 1996.

Annie G. Berthiaume, Vice-Chairperson

Ms. Annie G. Berthiaume was appointed as Vice-Chairperson of the CIRB on January 26, 2015.

Fluent in both English and French, Ms. Berthiaume has devoted her career to matters related to labour and employment law. Having represented not only employers but unions and employees also, she has appeared before various administrative tribunals, the Federal Court, the Federal Court of Appeal and the provincial courts of Quebec and Ontario.

Prior to her appointment, Ms. Berthiaume was a partner with the Ottawa firm Bird Richard. She also practiced with Norton Rose, Heenan Blaikie and Nelligan O'Brien Payne, and taught labour law at the University of Ottawa's Faculty of Law.

Ms. Berthiaume holds Bachelor of Laws from both the University of Sherbrooke and Queen's University. She is a member of the bars of Ontario and Quebec.

Graham J. Clarke, Vice-Chairperson

Mr. Graham Clarke was appointed as Vice-Chairperson of the CIRB on April 23, 2007.

A member of the bars of Ontario and Quebec since 1987, Mr. Clarke started practising labour law in Montréal. In 1988, he became legal counsel to the Canada Labour Relations Board's first Chairperson, Mr. Marc Lapointe. After leaving the Board, Mr. Clarke published the loose-leaf book *Canada Labour Relations Board: An Annotated Guide* (Aurora: Canada Law Book, 1992). He is also the author of *Clarke's Canada Industrial Relations Board* (Aurora: Canada Law Book, 1999), which was published following the 1999 amendments to the *Canada Labour Code*.

From 1990 to 2007, Mr. Clarke represented private sector clients in both official languages before a wide range of administrative tribunals and courts.

At the time of his appointment, Mr. Clarke was a partner in the firm Hicks Morley Hamilton Stewart Storie LLP, honourary legal counsel for United Way Ottawa and a member of the Board of Directors for Big Brothers Big Sisters Ottawa.

Louise Fecteau, Vice-Chairperson

Ms. Louise Fecteau was appointed as Vice-Chairperson of the CIRB on October 1, 2003.

Ms. Fecteau is a lawyer specializing in labour and commercial law. She served as Secretary General to the committee reviewing the Court of Quebec judges' salaries, pension plans and other benefits. She was also Vice-President and General Manager of the Canadian Manufacturers' Association. Ms. Fecteau has extensive experience in collective bargaining and arbitration of grievances.

Ms. Fecteau earned a Bachelor of Law from the Université Laval and a Master of Public International Law from the Paris-Sorbonne University.

Judith MacPherson, Vice-Chairperson

Ms. MacPherson possesses over 25 years of experience as a lawyer and arbitrator specializing in labour, employment and administrative law. She has held various positions serving on numerous committees, associations and boards, including the New Brunswick Labour and Employment Board as a Vice-Chairperson, the New Brunswick Public Service Labour Relations Board as an adjudicator, the Canadian Bar Association's National Judicial Salary and Benefits Committee as Chair and the NB Legal Aid Appeal Committee as a member. She was awarded the Queen's Counsel designation and the CBA, New Brunswick Branch Distinguished Service Award in recognition of her exceptional contribution to the legal profession.

She holds a Bachelor of Common Law (LL.B.) from the University of New Brunswick and a Bachelor of Arts from Saint Mary's University in Halifax.

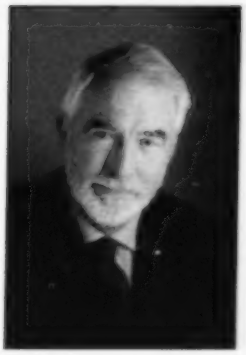
Allison Smith, Vice-Chairperson

Ms. Allison Smith was appointed as Vice-Chairperson of the CIRB on January 5, 2015.

Since her call to the Bar of Ontario in 2002, Ms. Smith's legal practice has focused on labour, employment and human rights law.

Prior to her appointment as Vice-Chairperson of the CIRB, Ms. Smith was Senior Legal Counsel at the Canada Post Corporation (CPC) from 2007 to 2015. In this capacity, Ms. Smith provided both legal and strategic advice to internal client groups and represented the CPC before a variety of administrative tribunals. Ms. Smith has also worked in private practice and as a senior policy advisor with the Government of Canada.

In addition to her Bachelor of Laws degree (University of Windsor), Ms. Smith also holds a Bachelor of Science (Zoology) degree and a Bachelor of Arts (Political Science) degree, both from the University of Toronto.



Patric F. Whyte, Vice-Chairperson

Prior to his appointment to the Board in November 2012, Mr. Whyte was an active labour mediator and arbitrator with Quicksilver Arbitration Services. His career experience has also included senior positions in a number of organizations, including the Ontario Labour Relations Board, MVP Personnel Services and Canada Post Corporation. He also served as a Chief Spokesperson at Collective Bargaining for the Retail, Wholesale and Department Store International Union.

Mr. Whyte is a member of the Red Sky Métis Independent Nation.

Richard Brabander, Member

Richard Brabander is a full time member of the CIRB serving as an employer representative.

His broad professional experience in labour matters and administrative law includes extensive involvement in a wide range of labour relations, human rights, employment and pay equity, and privacy and policy issues as they relate to federally-regulated employers. He practiced with Heenan Blaikie from 1997 to 2011, and as a partner of the firm, his advice was sought on a variety of issues, particularly on industrial relations and pay equity matters. Prior to that, Mr. Brabander had established and led a labour, employment and human rights group within the corporate law department of Bell Canada.

Mr. Brabander studied both Arts and Law at the University of New Brunswick. Throughout his career, he has participated actively in Canadian Bar Association and other conferences on labour law and related subjects, as a speaker, panel chair or conference chair, and he has also served for more than 20 years as an invited judge at the annual Laskin Moot national law schools competition in constitutional and administrative law.

Daniel Charbonneau, Member

Mr. Daniel Charbonneau is a full-time member of the CIRB serving as an employee representative.

Prior to his appointment, Mr. Charbonneau was an advisor with the Service Employees Union, Local 800 (QFL). He previously worked on the Air Canada customer service union (International Association of Machinists) committee (Eastern Region).

After obtaining a bachelor's degree in political science from the Université du Québec à Montréal, Mr. Charbonneau studied industrial relations at the Université de Montréal.

André Lecavalier, Member

Mr. André Lecavalier is a full-time member of the CIRB serving as an employer representative.

From 1990 to 2003, Mr. Lecavalier was Vice-President, Human Resources, at Clarke Inc. in Toronto. In this capacity, he dealt with various aspects of human resources (labour relations, compensation and benefits, training, recruitment, health and security) related to 1,500 employees. During this period, he also negotiated and administered several collective agreements across the country.

A graduate from the Université de Montréal (Bachelor of Arts in Sciences–Major in Industrial Relations), Mr. Lecavalier started his career with the City of Dorval, Quebec where he was responsible for fire prevention and labour relations for the fire department's employees.

Gaétan Ménard, Member

Mr. Gaétan Ménard is a full-time member of the CIRB serving as an employee representative.

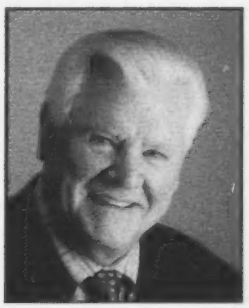
Mr. Ménard has close to 30 years of experience as a prominent union representative for the Communications, Energy and Paperworkers Union of Canada (CEP), and in 2006 became the youngest national officer in CEP's history. As Co-Chair of the Proposal Committee, he oversaw the merger between the Canadian Auto Workers Union (CAW) and CEP to form Unifor, Canada's largest private sector union, on August 31, 2013.

Norman Rivard, Member

Mr. Norman Rivard is a full-time member of the CIRB serving as an employee representative.

Mr. Rivard was the Chair of the Steelworkers—Industrial Wood and Allied Workers of Canada (I.W.A.) Council. He held positions as both Vice President and National President of the former I.W.A., was a union president in Northern Ontario, and he was also a member of the union's executive board, which established and oversaw the policy and administration of the national union. Mr. Rivard became active in union committees when he first began working as a machine operator for Rexwood Products in 1967. He is a certified Canadian Labour Congress union education instructor.

Part-time Members



William Terence Lineker, Member

Mr. Lineker has over 42 years experience as a human resources manager at the divisional and corporate levels in areas, including industrial and employee relations, and wage, salary and benefits administration. From 1997 to 2012, he was President and Chief Executive Officer of Forest Industrial Relations Ltd.

Cynthia Catherine Oliver, Member

Ms. Oliver has over 25 years experience as a union leader dealing with diverse labour relations issues on behalf of public policy and community organizations. Since 2002, she has occupied the position of President of the Federation of Post-Secondary Educators of British Columbia. Her experience with the organization includes leading provincial bargaining in the post-secondary education sector, as well as leading public advocacy on post-secondary education issues and collaborative efforts with the broader labour movement. She also represents members and locals in the grievance and arbitration process.

D. How does the CIRB carry out its operational role?

The Chairperson has supervision over and direction of the work of the Board, including:

- The assignment and reassignment of matters that the Board is seized of to panels
- The composition of panels and the assignment of Vice-Chairpersons to preside over panels
- The determination of the date, time and place of hearing
- The conduct of the Board's work
- The management of the Board's internal affairs

The CIRB's headquarters are located in the National Capital Region. In addition, the CIRB has four designated regional offices located in Montréal, Toronto, Vancouver and Ottawa and two satellite offices in Dartmouth and Winnipeg. These offices are staffed by labour relations professionals and case management teams, who report to the Executive Director and General Counsel.

Applications and complaints filed with the Board are received in one of the regional offices and managed in accordance with the *Canada Industrial Relations Board Regulations, 2012* (the *Regulations*) or the *Status of the Artist Act Procedural Regulations* and the Board's existing policies and procedures. An industrial relations officer is assigned to every matter to oversee its conduct and will proactively offer mediation in order to assist the parties in resolving their dispute. If mediation is unsuccessful, the matter, with the parties' written submissions, is referred to the Chairperson for assignment to a panel of the Board.

The Board can adjudicate a matter on the basis of the written submissions or may decide to hold an oral hearing to obtain further evidence.

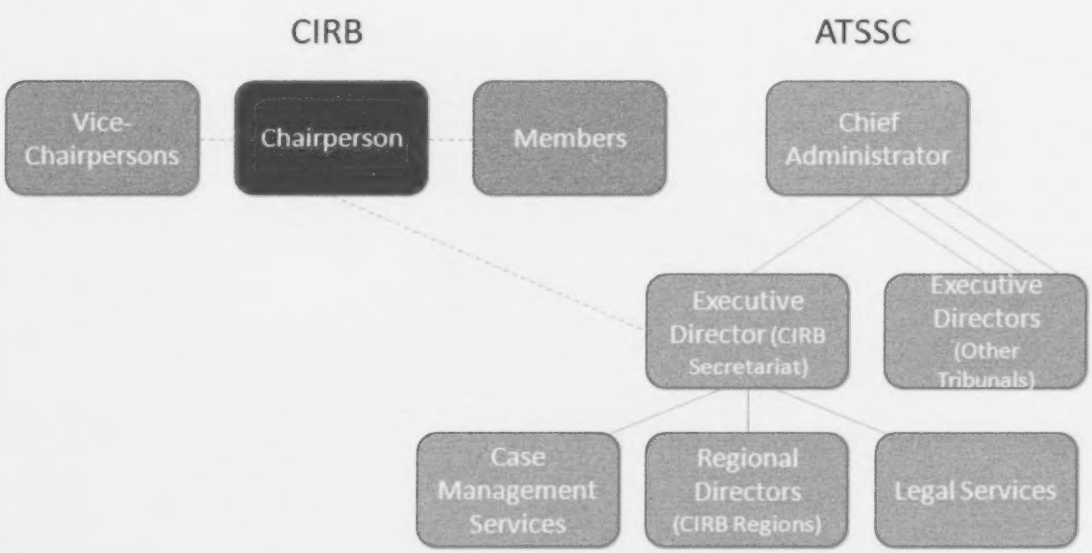
Creation of the ATSSC

On November 1, 2014, the *Administrative Tribunals Support Service of Canada Act* came into force and established a separate organization under the portfolio of the Department of Justice to provide and manage the support services to eleven different administrative tribunals.

Through this enactment, the CIRB saw all its financial and human resources transferred to the Administrative Tribunals Support Service of Canada (ATSSC), including the industrial relations officers, legal counsel, registry staff and the executive director who are now employees of the ATSSC.

Under this new model, the Board negotiates and obtains all the funding and services it requires to deliver on its mandate from a third party organization. The Board maintains its authority to direct the work of ATSSC employees on case files; however, it has no ability to direct or establish the priorities of the ATSSC or to determine the focus of its corporate resources.

Diagram of Structure



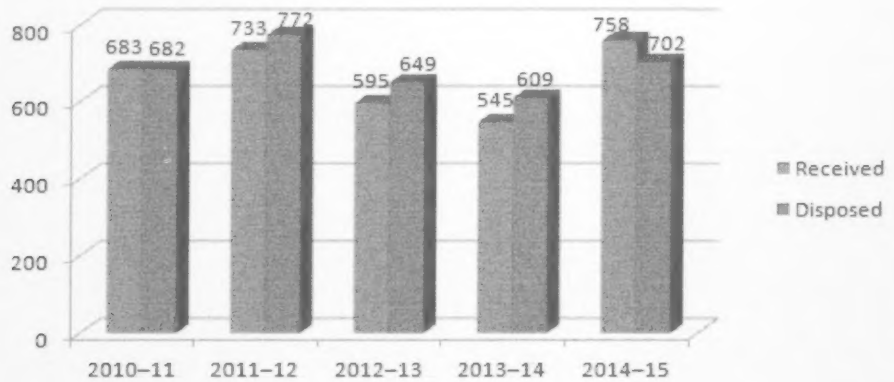
The CIRB is composed of the Chaiperson, Vice-Chairpersons and members.

The CIRB Secretariat is composed of the Executive Director, Regional offices (CIRB Regions), Case Management Services and Legal Services. The CIRB Secretariat, as well as Secretariats of other tribunals, report to ATSSC's Chief Administrator.

II. 2014–15 in Review

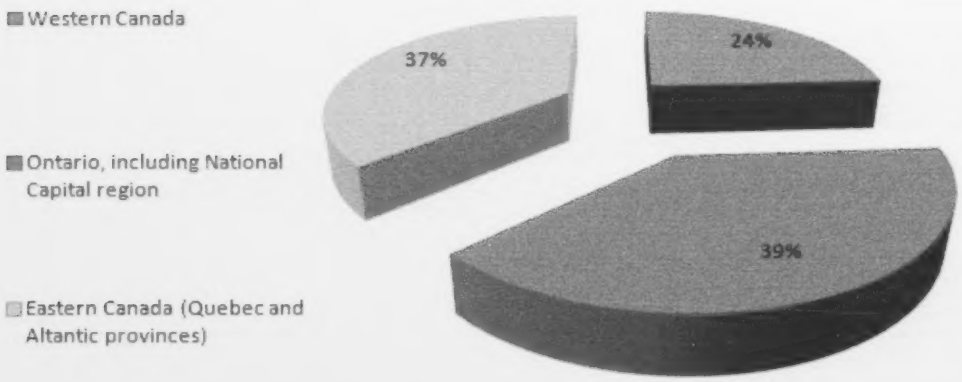
A. Caseload and Activities

Figure 1–Volume of Matters



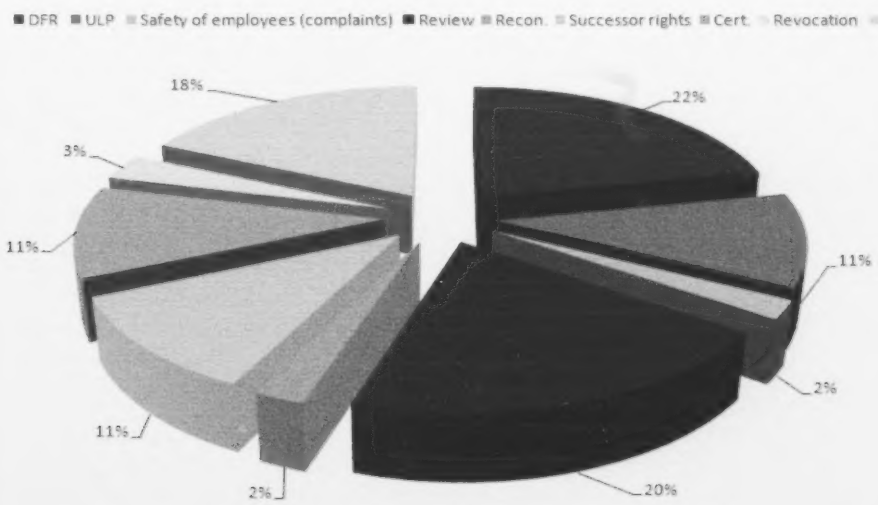
The nature of the demand for Canada Industrial Relations Board (the CIRB or the Board) services varies from year to year, depending on the state of the economy and other factors affecting the labour market. From April 1, 2014 to March 31, 2015, the Board received 758 applications and complaints. This represents a 39% increase over the 2013–14 fiscal year and, as illustrated in Figure 1, an overall high over the last five fiscal years.

Figure 2–National Breakdown for Incoming Matters



The highest number of incoming matters originate from the Ontario Region, and represent almost 40% of the Board's caseload.

Figure 3–Volume of Matters Received by Type of Matter 2014–15



Under Part I of the *Canada Labour Code*, unfair labour practice (ULP) complaints continue to represent the greatest number of matters, at 33% of all matters received during the period. Of these matters, duty of fair representation (DFR) complaints represent 22% of all matters while other ULP complaints represent 11% of matters. Applications to review, rescind, amend, alter or vary any Board order or decision follow at 20%, whereas applications for reconsideration of a Board decision represent 2% of all matters received. Applications for certification represent 11% of the Board's incoming workload, and applications for revocation represent 3%. During the period under review, the Board has also seen an increase in the number of successor rights applications further to the merger of Canadian Auto Workers Union (CAW) and Communications, Energy and Paperworkers Union of Canada (CEP), now known as Unifor. These types of applications represent 11% of the Board's workload.

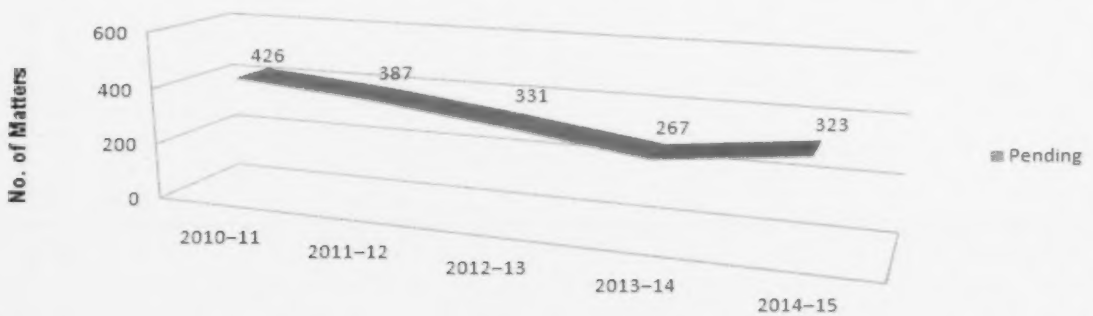
Under Part II of the *Canada Labour Code*, complaints of reprisal for raising safety concerns represent 2% of the Board's workload.

With respect to the number of cases that were resolved during the period under review, the Board disposed of 702 applications/complaints. The proactive intervention and effective mediation assistance on the part of the regionally based industrial relations officers resulted in a settlement rate for unfair labour practice

complaints of 43%. Mediated settlements result in more timely and constructive outcomes for complainants and respondents, and ultimately promotes harmonious labour relations.

Under the *Status of the Artist Act*, the Board renewed 14 certification orders.

Figure 4–Matters Awaiting Determination



At the end of the reporting period, there were 323 pending matters. Although this is not the lowest level reported by the Board, it represents an ongoing and manageable caseload.

B. Effectiveness

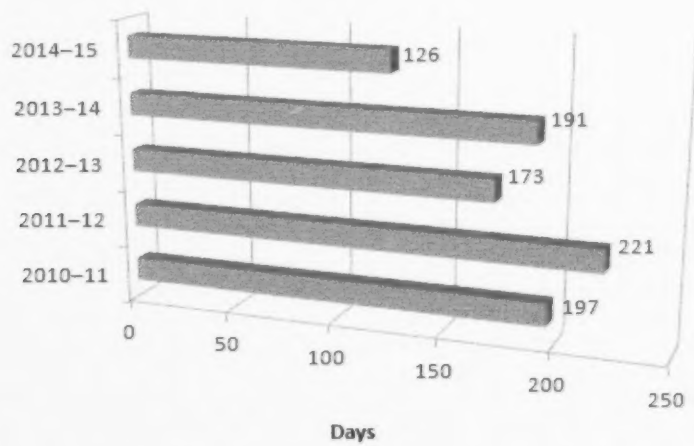
The Board's effectiveness can be measured by its ability to resolve applications and complaints expeditiously and fairly. Unreasonable delays in processing matters and issuing decisions can negatively affect labour-management relations and cause significant problems for parties that need final resolution of their dispute.

Through focused and sustained case management efforts, priority is given to matters in which a delay may pose significant adverse industrial relations consequences. An expedited procedure is in place for the processing of certification and revocation applications. A prima facie review process is in place for duty of fair representation cases in order to better assess the needs of individual cases and assign the appropriate resources. This has resulted in a significant reduction in the disposition time of these matters. The Board also encourages the use of pre-hearing procedures such as case management conferences with the parties to identify issues to be determined by the Board. In the course of these

proceedings, the Board may make rulings that are binding on the parties and, in many cases, reduces the length of public hearings. During the year under review, the Board also implemented several electronic processes that provide greater capacity and efficiency in the processing of files.

Processing Time

Figure 5–Average Processing Time



The time required to process a file—which includes opening, investigating, mediating, hearing, and deciding a case—continued to be the focus of the Board. During the period under review, the Board was able to maintain its average case processing time to 126 days. This is a significant improvement from the previous year and well below the five-year average of 182 days.

One indicator that the Board considers indicative of its effectiveness is the number of cases that are processed within one year from the date of filing with the Board. In the last year, the Board was able to dispose of 91% of its cases within the 12-month period. This is up from 81% in the previous year.

The majority of matters that remain pending after one year are those that are scheduled for hearing or placed in abeyance at the request of the parties as they seek other ways of resolving their dispute.

Decision-Making

The Board issues detailed *Reasons for decision* in matters of broader national significance and/or significant precedential importance. In other matters, concise letter decisions help expedite the decision-making process, thereby providing more timely industrial relations outcomes for the parties involved. The Board also disposes of certain matters by issuing an order that summarizes the Board's decision. The Board strives to provide timely and legally sound decisions that are consistent across similar matters in order to establish strong and clear jurisprudence. One component of the overall processing time is the length of time required by a Board panel to prepare and issue a decision following the completion of the hearing of a matter. A panel may decide a case without a hearing on the basis of written and documentary evidence, such as investigation reports and written submissions, or may defer the decision until further evidence and argument is obtained through an oral hearing.

From April 1, 2014, to March 31, 2015, the CIRB issued 53 detailed *Reasons for decision*, 194 letter decisions and 266 orders, for a total of 513 written decisions.

Another approach to evaluating the Board's performance on decision-making time is to use section 14.2(2) of the *Code* as a benchmark. This section requires that a panel must render its decision and give notice of it to the parties no later than 90 days after the day on which it reserved its decision or within any further period that may be determined by the Chairperson. Against this criterion, the Board was well within its target as the average decision-making time of disposed matters during the period under review was 42 days. The Board continues to demonstrate commitment and resolve in maintaining its rate of disposition to ensure that it does not allow a backlog of cases to reoccur.

Judicial Reviews

Another measure of the Board's performance, as well as a measure of the quality and soundness of its decisions, is the frequency of applications for judicial review of Board decisions to the Federal Court of Appeal, and the percentage of decisions upheld as a result of these reviews. In this respect, the Board continues to perform exceptionally well. From April 1, 2014, to March 31, 2015, there were 13 applications for judicial review filed with the Federal Court of Appeal. The Court disposed of 13 applications—some filed in the previous year—and the Board's decisions in these matters were upheld.

C. Certification and Revocation Applications–Changes in Processing

Enactment of Bill C-525, *Employees' Voting Rights Act*

The enactment of the *Employees' Voting Rights Act* (the *Act*) led to amendments to the *Canada Labour Code (Part I–Industrial*

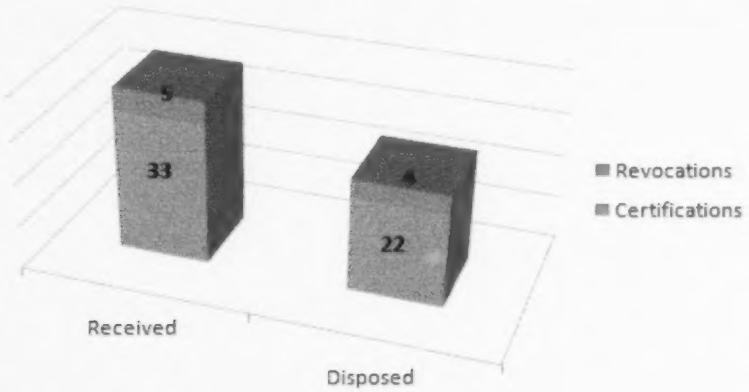
Relations). As a result, since June 16, 2015, any applicant applying for certification must show that, as of the date of the filing of the application, it has membership support of at least 40% (instead of 35%) of the employees in a bargaining unit deemed to be appropriate by the Board. If the applicant meets this threshold, the Board must order a mandatory representation vote. Similarly, in the case of an application for revocation, a vote will be held where the applicant shows that, as of the date of the filing of the application, the applicant has the support of at least 40% of the employees in the unit concerned. Consequently, the Board may no longer certify or decertify a trade union solely on the basis of membership evidence or evidence in the form of a statement filed with the application.

During the period under review, the Board established new procedures to ensure the timely processing of certification and revocation applications following the coming into force of the statutory amendments. Among other things, the Board has shortened the time limits for submitting documentation, responses and replies and has established a new processing schedule aimed at ensuring that representation votes are held in a timely manner in order to minimize or avoid disputes during the certification/decertification process resulting in unfair labour practice complaints. In addition, it has developed new forms and information circulars and added detailed instructions to applications for certification and revocation forms to guide parties through the statutory amendments.

Although the new statutory provisions came into force after the period under review, the Board takes this opportunity to offer some information on its initial experience with the new process.

Review of the 5.5–Month Period Since the Coming Into Force of the *Act*

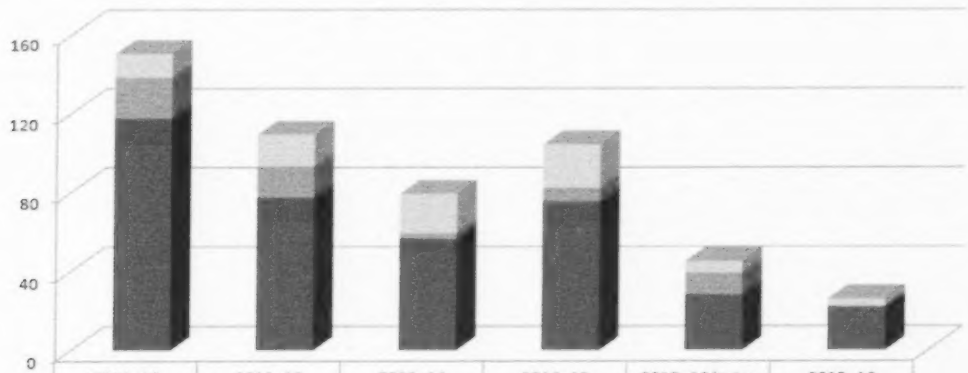
Figure 6–Volume of Matters from June 16 to November 30, 2015



Between June 16, 2015 and November 30, 2015, the Board has received a total of 38 certification and revocation applications and has disposed of 26 matters.

Applications for certification include applications to certify newly organized bargaining units that have no previous history of collective representation or collective bargaining; applications to displace an incumbent bargaining agent, that is, when members of an organized bargaining unit wish to replace their bargaining agent with a different bargaining agent; and applications where the bargaining agent has been voluntarily recognized by the employer, but wishes to obtain formal confirmation from the Board as to its status. Applications for revocation are filed when members of an organized bargaining unit wish to "decertify" their bargaining agent, i.e. become non-union.

Figure 7–Number of Certification and Revocation Applications Disposed of in the Last Five Years



	2011–12	2012–13	2013–14	2014–15	2015–16 (prior to)	2015–16 (following)
Revocation	12	16	20	22	6	4
Voluntary recognition	21	16	3	7	11	0
Displacement	13	11	6	12	1	1
Certification	104	66	50	63	27	21

Figure 7 summarizes the number of certification and revocation applications, by type, disposed of in the past 5 years, including 2015–16, the fiscal year during which the *Act* came into force. The figures for this fiscal year have been divided to illustrate the number of matters disposed of prior to[1] and following[2] the coming into force of the *Act*.

[1] From April 1 to June 15, 2015

[2] From June 16 to November 30, 2015

Processing Time

Since the implementation of the new procedures referred to above, the Board aims to process certification and revocation applications within 30 days, that is, from the date the application is filed with the Board to the date of the Board's final decision. Of the 26 certification and revocation applications disposed of under the new procedures, 21, or 81%, were disposed of within the 30-day target.

Representation Votes

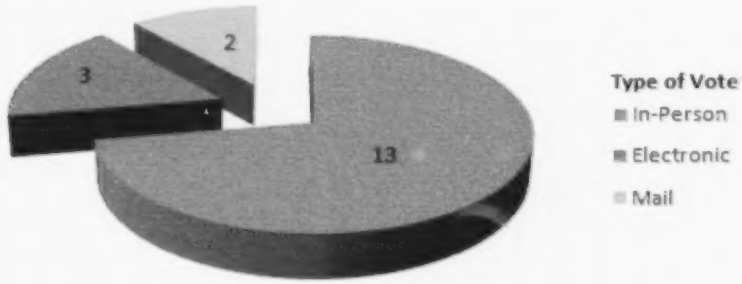
As mentioned, under the new regime, representation votes are now mandatory in all certification and revocation applications if the applicant meets the 40% support threshold at the time of filing the application. The Board's challenge has been to ensure that these representation votes are held in a timely manner.

The average number of days to commence the vote will vary based on the voting method. The Board conducts representation votes in one of three ways:

1. In-person votes, normally held in the workplace or a nearby location
2. Mail-in ballots
3. Electronic voting

The decision as to the manner in which the representation vote will be taken is based on the size and geographic location of the employees in the bargaining unit. Normally, in-person votes will be held in cases involving a small bargaining unit in which the employees work at a single location. Prior to the advent of electronic voting, the Board used mail ballots to conduct representation votes in cases where the employees are widely dispersed or do not work at a common location (e.g., truck drivers). In recent years, the Board has implemented the use of electronic voting for large and/or widely dispersed bargaining units. Electronic voting permits employees to vote by telephone or over the internet. The Board's experience to date has demonstrated that there are fewer issues with electronic voting (for example, no spoiled ballots) and that participation rates tend to be equal to or greater than mail ballots.

Figure 8–Number of Votes Held from June 16 to November 15, 2015: 18



From June 16 to November 30, 2015, of the total number of applications disposed of, the Board has conducted 18 representation votes, the majority (13 or 72%) of which were held in person.

Since the coming into force of the statutory amendments, representation votes are ordered, on average, within 15 days and commenced within 20 days of the date the application is filed with the Board. This contrasts with applications disposed of prior to the amendments where votes were held in very few cases. In those cases, it is only after a full investigation and submissions by the parties that the Board would consider the matter and order a vote if necessary. In fact, on average, votes were held in only 18% of all applications for certification or revocation filed with the Board in the last three years prior to the amendments.

Figure 9–Average Number of Days to Conduct Representation Votes by Fiscal Year

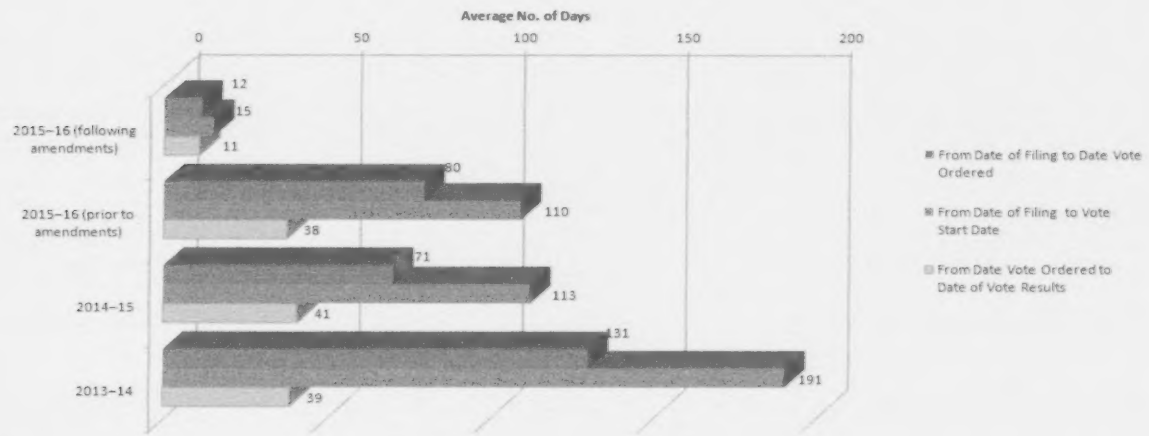


Figure 9 illustrates the average number of days required for ordering and conducting representation votes, prior to and following the coming into force of the amendments.

Key Observations

The following are the Board's key observations since the coming into force of the *Act*.

Size of Bargaining Units

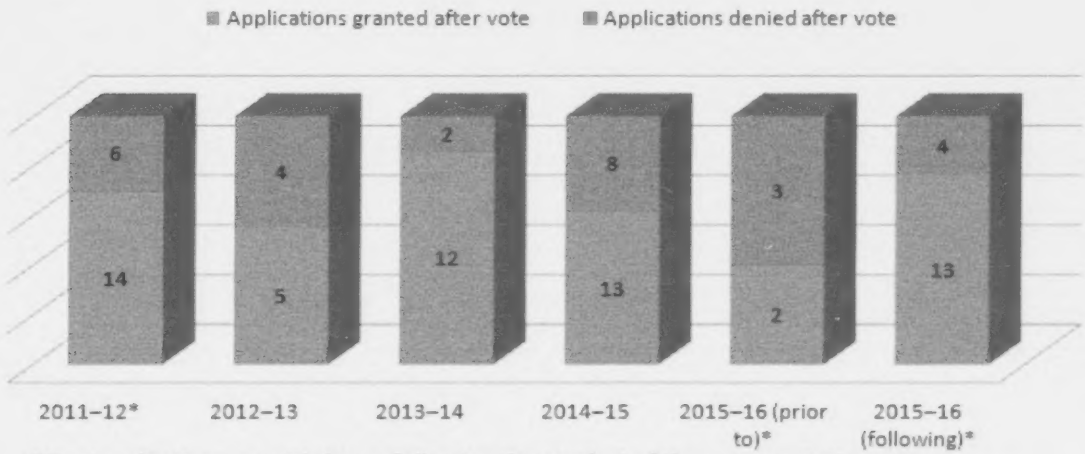
Historically, the average size of the bargaining units involved in bargaining rights applications before the Board has been relatively small. Following the coming into force of the *Act*, the largest bargaining unit involved in a certification or revocation application was a certification application for a unit of 1,266 employees. The smallest was for a unit of 2 employees. Of the 38 applications received, 30 or 79%, were for units of less than 60 employees. Fourteen applications (or 37%) involved 10 employees or less. As the *Code* requires a participation rate of at least 35% in order for a vote to be valid, the vote of each employee is crucial in applications involving small bargaining units. The Board strives to ensure that the vote information is communicated broadly to all employees concerned by an application.

Results of Votes

There is a clear reduction of the average number of days it takes the Board to order and conduct representation votes under the new regime. This is due to very tight timelines imposed on the parties and the

highest priority given to certification and revocation applications by the Board at all levels. In addition, although the Board strives to hold the votes as quickly as possible following the filing of an application, this does not avoid disputes that lead to unfair labour practice complaints. In fact, of the 38 applications received, 7 related unfair labour practice complaints were filed.

Figure 10–Number of Applications Granted or Rejected Following the Conduct of a Representation Vote



*One application was withdrawn following the conduct of the representation vote

Also of particular note is that the results of the representation votes in the vast majority of cases confirm the applicant's support at the time of the filing of the application. The percentage of support following the holding of the vote remains relatively the same or is greater than that demonstrated by the membership evidence filed with the application. This was true in all matters where a representation vote was conducted except for one. In another case, the vote was not counted because the required 35% participation threshold was not met. Figure 10 demonstrates the number of matters granted or rejected after a representation vote is held.

Processing Time

The Board has been successful in meeting its 30-day objective for the processing of certification and revocation applications in 81% of matters disposed of in the first five and a half months since the statutory amendments came into force. Cases that took longer involved particular situations that required a different case management

approach. For example, in one case, a second vote was ordered by the Board on consent of the parties. In another case, the matter was held in abeyance for a period of time while the provincial labour board was proceeding with a parallel application. Nevertheless, the Board has achieved its objective in a large majority of cases and it has done so by adhering to very strict processing schedules and by only granting extensions of time to submit the necessary information to the Board in exceptional cases. The priority given to certifications and revocations in order to meet the statutory mandate has put additional strain on the Board's dedicated resources as well as on the parties themselves to ensure the timely processing of these applications.

D. Innovative Approaches

Enhanced Electronic Case Management Capabilities

During the 2014–15 fiscal year, significant effort and resources were deployed to implement electronic capture of all in-coming documents and the automated creation of e-case files. Consequently, the work can be reallocated to other regional offices as necessary to handle the processing of matters.

The Board also launched a web portal by which clients can file applications/complaints or any subsequent documents electronically.

Electronic Votes

The CIRB now incorporates electronic voting in its repertoire of tools to conduct representation votes. In circumstances where the unit encompasses a large number of employees or where employees are dispersed over a wide geographic area, the industrial relations officers will conduct e-votes supported by an outside electronic voting system company. Eligible employees are issued personal identification numbers (PINs) and are able to cast a secure electronic ballot via the Internet or telephone. The Board's officers administer the vote and oversee the auditing process. At the conclusion of the voting period, the ballots are tabulated instantaneously, which allows the parties to know the results without delay. E-voting has proved to be a secure, cost-effective and expedient means to ascertain employee wishes.

E. Client Community Outreach

The Board continuously engages with its client community through the Client Consultation Committee (the Committee) or other forum to ensure it remains relevant in its processes and approaches to case management.

The Committee is composed of the Chairperson, the Executive Director and General Counsel and representatives selected by the Board's major client groups, including:

- Federally Regulated Employers in Transportation and Communication (FETCO)
- Canadian Labour Congress (CLC)
- Confédération des syndicats nationaux (CSN)
- Canadian Association of Labour Lawyers (CALL) (representing labour side counsel)
- Canadian Association of Counsel to Employers (CACE) (representing employer side counsel)

The Committee provides advice and recommendations to the CIRB's Chairperson on ways in which the CIRB can best meet the needs of its clients. The Committee convened twice in 2014–15, to discuss amongst other matters, the implementation of the *Act*.

The Board also engaged with the Committee and sought feedback from its stakeholders when it developed proposals to modify its *Canada Industrial Relations Board Regulations, 2012* (the *Regulations*) in order to implement the *Act*. The feedback and proposals received was analyzed by the Board and led to the Board electing to implement a pilot project in June 2015 before proceeding to formally modifying its *Regulations*.

In keeping with the preamble of the *Canada Labour Code*, the Board engaged in promoting the common well-being of Canadian workers, trade unions and employers through the encouragement of free collective bargaining and the constructive settlement of disputes and it supported labour and management in their cooperative efforts to develop good relations and constructive collective bargaining practices. The Chairperson and other members of the Board attend various forum and meetings in an effort to communicate the Board's policies and seek input from the community it serves. These outreach activities on the national and international scenes provide the Board with access to best practices that it can emulate and adopt to improve its performance and service delivery approaches.

III. Key Decisions

As mentioned earlier, the Canada Industrial Relations Board (the Board) issues its decisions in different formats. Reasons for Decision are usually lengthier decisions in which the Board explains a particular point or establishes concepts of jurisprudential value. Below are examples of Board decisions issued in the period under review.

La Coopérative de transport maritime et aérien, 2015 CIRB 731

Key issues: Change of activity–Scope of section 44(3)(c) of the *Code*–Conciliation process initiated under Quebec law

It is the responsibility of the Minister of Labour, and not of the Board, to determine whether or not the conciliation process initiated under Quebec law could be recognized under the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*).

La Coopérative de transport maritime et aérien (CTMA) asked the Board to recognize that a change of activity occurred effective February 1, 2009, which caused the parties to fall under the jurisdiction of the *Code*, pursuant to section 44(3). CTMA operated an extra-provincial shipping and transportation route between Souris, Prince Edward Island, and Cap-aux-Meules, Îles-de-la-Madeleine. The United Steelworkers, Local 9538, was certified under the Quebec *Labour Code* to represent the officers of CTMA. The parties engaged in the conciliation process initiated under Quebec law and were scheduled to attend a hearing with Quebec's Commission des relations du travail on the issue of the maintenance of essential services in the event of a strike.

CTMA argued that the notice to bargain given under the Quebec *Labour Code* could not be recognized by the Board under section 44(3)(c). The union alleged, among other things, that CTMA unilaterally terminated the conciliation process initiated in Quebec, suddenly claiming that it came under federal jurisdiction after 33 years of provincially regulated industrial relations, and that it did so to prevent the union from exercising its right to strike.

The Board found that the employer's operations fell under federal jurisdiction. Although CTMA had been carrying out certain extra-provincial activities for more than 30 years, those activities became more frequent and continuous since the implementation of a pilot project agreed to with the Government of Canada in February 2009 and confirmed in 2011. That agreement therefore allowed the Board to recognize that a change of activity had occurred effective in 2009.

The Board then considered the effect of section 44(3)(c) of the *Code*, which allows it to recognize "any proceeding that... was before the... authority that, under the laws of the province,

is competent to decide the matter." CTMA raised a possible ambiguity between the two official versions of this provision. The English version contains the wording "to decide the matter," which is not explicitly used in the French version. According to the English version of section 44(3)(c), it would seem that only proceedings before an authority that, under the laws of the province, is competent to decide the matter are recognized under the *Code*.

While section 44(3)(c) clearly applies to proceedings such as those before Quebec's Commission des relations du travail regarding the issue of essential services, the scope of that section is not as clear when it relates to the notice to bargain or the notice of dispute. The Board stated that formalities relating to the collective bargaining process are not proceedings requiring that a competent authority arrive at a decision.

Regardless of the scope of section 44(3)(c), the Board used the broad authority vested to it by section 46 of the *Code* to recognize the notice to bargain given under Quebec law. The notice complied with the requirements set out at section 49 of the *Code* as well as the basic requirements set out at section 5 of the *Canada Industrial Relations Board Regulations*. However, the Board noted that it was the responsibility of the Minister of Labour and not of the Board to determine whether or not the request for conciliation and the conciliation process initiated by the parties under Quebec law could be recognized pursuant to section 71 of the *Code*.

Avant-Garde Sécurité Inc., 2014 CIRB 728

Key issues: Constitutional jurisdiction–Scope of geographic certification–Security operations–Checking work

The Board held that a geographic certification for checkers in the Port of Montreal applied to a portion of a security company's operations.

The International Longshoremen's Association, Local 1657 (ILA), filed an application with the Board to review its existing geographic certification for checkers and coopers at the Port of Montréal. The ILA asked the Board to confirm that its geographic certification applied to Avant-Garde's security activities at Termont—a terminal handler represented by the Maritime Employers Association (MEA). The ILA's application resulted from a technological change, which allowed computers to identify certain information on containers and vehicles leaving Termont, thereby reducing the number of checkers required.

In response, the MEA, Termont, and Avant-Garde raised an objection to the Board's constitutional jurisdiction over Avant-Garde's security operations. They relied heavily on the Supreme Court of Canada's decision in *Tessier Ltée* v. *Quebec (Commission de la santé et de la sécurité du travail)*, 2012 SCC 23 (*Tessier*). As a result, the Board's decision dealt with two

legal issues: the question of constitutional jurisdiction and the scope of the geographic certification.

First, applying the derivative jurisdiction test, the Board found that a portion of Avant-Garde's security operations fell under federal jurisdiction. In doing so, it distinguished this case from the decision in *Tessier*. Unlike *Tessier*, the ILA did not argue that Avant-Garde's entire operations fell under federal jurisdiction. Instead, the ILA argued that a portion of Avant-Garde's activities fell under federal jurisdiction. The Board drew an analogy between the security services in this case and perimeter security services at an airport, which fall under federal jurisdiction. In essence, the obligation to comply with the *Marine Transportation Security Regulations* satisfied the Board that Avant-Garde's operations were vital and essential to Termont's operations.

Second, the Board reviewed the main case law applicable to the longshoring industry and the concept of "actively engaged" in longshoring under section 34 of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*). It concluded that the addition of the terms "actively engaged" in the 1999 amendments to the *Code* were not designed to separate longshoring employers into two groups depending on their level of longshoring activities. Instead, the amendment merely separated those actually doing longshoring work from other employers who serviced the longshoring industry. The Board preferred an interpretation of section 34 that prevented "free-loaders".

The Board found that the security guards regularly performed "checking work" by verifying container-specific information for every container leaving Termont. In particular, the guards confirmed whether full containers had a seal. The Board was reluctant to define "checking work". However, it noted that checking relates to activities linked with the containers and contents, which Termont handled for its shipping clients.

In light of the above, the Board found that Avant-Garde's activities relating to Termont's containers brought a portion of it within the scope of the geographic certification in the Port of Montréal. The Board did not determine any issues under the parties' collective agreement, which remained solely within an arbitrator's jurisdiction.